

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MINNESOTA

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4 FAIR ISAAC CORPORATION,

5 Plaintiff,

6
7 v. Court File No. 16-cv-1054(WMW/DTS)

8 FEDERAL INSURANCE COMPANY,
9 an Indiana corporation, and ACE
10 AMERICAN INSURANCE COMPANY,
11 a Pennsylvania corporation,

12 Defendants.
13 -----

14 VIDEO DEPOSITION OF

15 THOMAS CARRETTA

16 MARCH 22, 2019

17 9:31 A.M.
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1 VIDEO DEPOSITION of THOMAS CARRETTA,
2 taken pursuant to Notice and agreement of and
3 between counsel at the offices of Fredrikson &
4 Byron, P.A., 200 South Sixth Street, Suite 4000,
5 Minneapolis, Minnesota, at approximately 9:31
6 a.m. on March 22, 2019, before Jodi M.
7 Weisenburger, Notary Public, County of Hennepin,
8 State of Minnesota, to be used in the
9 above-entitled cause.

10
11 A P P E A R A N C E S :
12

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ALSO PRESENT: Jim Woodward.
VIDEOGRAPHER: Kurt Glenn

<p>1 Europe too? Does that work for you?</p> <p>2 A. Well, United Kingdom is a group of countries, but</p> <p>3 if you want to say it was in Europe broadly, yes,</p> <p>4 it was in Europe broadly.</p> <p>5 Q. I just want to make clear because sometimes in the</p> <p>6 record it's referred to as use in Europe, but</p> <p>7 you're using United Kingdom, so I just wanted to,</p> <p>8 I guess, clarify. Are those --</p> <p>9 A. United Kingdom is part of Europe, yes.</p> <p>10 Q. Right. And so that is one use that you've</p> <p>11 identified that FICO contends is outside the scope</p> <p>12 of the license --</p> <p>13 A. Yes.</p> <p>14 Q. -- correct? Okay.</p> <p>15 You've identified use in Canada as being</p> <p>16 outside of the scope of the license, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And then you've identified use in Australia as</p> <p>19 being outside the scope of the license, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Are there any other uses that FICO alleges --</p> <p>22 And you've identified use after the</p> <p>23 merger, correct?</p> <p>24 A. That's right.</p> <p>25 Q. Those are -- I would say those are the four</p> <p style="text-align: right;">Page 12</p>	<p>1 him certain information.</p> <p>2 MS. KLIEBENSTEIN: He is here to testify</p> <p>3 based on FICO's knowledge that's separate and</p> <p>4 apart from what's been worked up by outside</p> <p>5 counsel, so that's the distinction that I'm trying</p> <p>6 to make.</p> <p>7 It's the same as with the damages topic</p> <p>8 when the judge said if there's facts that FICO</p> <p>9 knows pre-complaint outside of working up the case</p> <p>10 in the lawsuit, you can provide a factual witness</p> <p>11 on that. So it's the same sort of concept when it</p> <p>12 comes to questions about the claims or other legal</p> <p>13 things like that.</p> <p>14 He's prepared. I just wanted to get it</p> <p>15 on the record. You can ask your questions and</p> <p>16 we'll move through it.</p> <p>17 MS. JANUS: Okay. Well, just so the record</p> <p>18 is clear, I expect that he's going to be providing</p> <p>19 the full extent of the factual basis for claims of</p> <p>20 unlicensed use in this lawsuit which I think is a</p> <p>21 really basic thing that we're entitled to</p> <p>22 discover.</p> <p>23 Back to my question. So I'll start over</p> <p>24 so that you can recall where we were. You had</p> <p>25 identified four categories of unlicensed use, or</p> <p style="text-align: right;">Page 14</p>
<p>1 categories that you've identified so far this</p> <p>2 morning as forming the basis for FICO's claims</p> <p>3 that there was use outside of the scope of the</p> <p>4 license.</p> <p>5 Are there any other uses that FICO</p> <p>6 alleges in this lawsuit were outside of the scope</p> <p>7 of the license?</p> <p>8 MS. KLIEBENSTEIN: Hold on just a second.</p> <p>9 I'll just pop in with an objection. I think this</p> <p>10 line of questioning calls for a legal contention.</p> <p>11 I'll also note that Mr. Carretta is not</p> <p>12 designated under the protective order to receive</p> <p>13 Chubb AEO information. So he's here to testify on</p> <p>14 behalf of what FICO knows generally outside of</p> <p>15 what's been learned in the lawsuit to the best</p> <p>16 that he can kind of bridge those two things. You</p> <p>17 can go ahead.</p> <p>18 MS. JANUS: Well, that's a choice that you --</p> <p>19 I mean, he's here to testify to FICO's position in</p> <p>20 the lawsuit, so if he hasn't been provided with</p> <p>21 certain information that informs FICO's position,</p> <p>22 that's on you. I mean, this is the topic and he's</p> <p>23 here to provide testimony on it. So your</p> <p>24 objection is on the record, but I don't think you</p> <p>25 can limit the scope of his testimony by not giving</p> <p style="text-align: right;">Page 13</p>	<p>1 alleged unlicensed use. One was use after the</p> <p>2 merger, correct?</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. JANUS:</p> <p>5 Q. One was use in Europe or the United Kingdom,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. One was use in Canada?</p> <p>9 A. Yes.</p> <p>10 Q. And one was use in Australia?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Are there any other alleged uses that FICO</p> <p>13 asserts in this lawsuit were unlicensed?</p> <p>14 A. It's -- no, it's what's stated in the complaint,</p> <p>15 and that includes those four items.</p> <p>16 Q. Does any use by -- strike that.</p> <p>17 Does any use in the United States</p> <p>18 pre-merger form the basis for FICO's claims in</p> <p>19 this lawsuit?</p> <p>20 A. In the United States?</p> <p>21 Q. Correct.</p> <p>22 A. No, I don't recall.</p> <p>23 Q. Is the answer no?</p> <p>24 A. No, I think the answer is I don't recall. The way</p> <p>25 this came about is we became aware of the merger.</p> <p style="text-align: right;">Page 15</p>

<p>1 and the merger has a prohibition against the</p> <p>2 assignment, and so our knowledge of what people</p> <p>3 were doing within Chubb & Sons and/or a broader</p> <p>4 organization affiliated with Chubb Corporation or</p> <p>5 set of companies, our knowledge was that, okay,</p> <p>6 the merger occurred, that triggers the</p> <p>7 anti-assignment clause which says no use may be</p> <p>8 made because there's no assignment, and then</p> <p>9 thereafter, we looked at and discovered that there</p> <p>10 were these other instances -- or I should say -- I</p> <p>11 don't want to confuse the word instance from a</p> <p>12 technology standpoint with events -- of somebody</p> <p>13 using the software outside of the United States,</p> <p>14 and that's when we came to know that there were</p> <p>15 these other elements or instances of use, the</p> <p>16 three that we talked about, Europe, Australia and</p> <p>17 Canada.</p> <p>18 Q. Okay. And my question was, does any use within</p> <p>19 the United States pre-merger form the basis for</p> <p>20 FICO's claims in the lawsuit?</p> <p>21 A. The use that we're aware of is -- pre-merger</p> <p>22 wasn't known. It was only until the merger that</p> <p>23 we became known of any other misuses or what we</p> <p>24 characterize as misuse.</p> <p>25 Q. Okay. And so I'm trying -- you understand the</p> <p style="text-align: right;">Page 16</p>	<p>1 Q. I'm asking the question. I'm not telling you what</p> <p>2 you testified. I'm asking the question.</p> <p>3 A. The answer is no.</p> <p>4 Q. So explain to me how the answer is no.</p> <p>5 A. Because that knowledge is unique to Chubb & Sons,</p> <p>6 so there may be things that we never knew about</p> <p>7 but that we didn't raise in the lawsuit. Only</p> <p>8 Chubb & Sons would know if they're using all the</p> <p>9 licenses correctly; in other words, we didn't have</p> <p>10 any claim that we were aware of prior to that, to</p> <p>11 the merger, and it's only because of the merger</p> <p>12 that we got into this.</p> <p>13 Q. Okay. So do you have any claim that you're aware</p> <p>14 of now based on use within the United States prior</p> <p>15 to the merger?</p> <p>16 A. Just what's stated in the complaint.</p> <p>17 Q. That's not my question. I'm asking you for an</p> <p>18 answer to my question.</p> <p>19 A. Well, I'm referring to a document that explains</p> <p>20 our claims.</p> <p>21 Q. Not very well. So I've asked you a question.</p> <p>22 Could you answer it?</p> <p>23 A. Well, I don't believe we made a claim for any use</p> <p>24 prior to the merger for Chubb & Sons in the United</p> <p>25 States.</p> <p style="text-align: right;">Page 18</p>
<p>1 reason for my question, right?</p> <p>2 A. No.</p> <p>3 Q. I'm trying to understand what FICO is claiming in</p> <p>4 this lawsuit --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- specifically how FICO claims that the</p> <p>7 defendants in the lawsuit breached the license</p> <p>8 agreement. My question I think is pretty</p> <p>9 straightforward.</p> <p>10 Does any use within the United States</p> <p>11 prior to the merger form the basis for FICO's</p> <p>12 claim in this lawsuit?</p> <p>13 A. And as I've indicated, the answer is no, we</p> <p>14 weren't aware of any of that type of use prior to</p> <p>15 the merger. We thought everything was fine.</p> <p>16 Q. Okay. So -- well, the way you're phrasing it is</p> <p>17 in the past tense. I'm asking present tense here.</p> <p>18 I'm asking, do FICO's claims -- are FICO's claims</p> <p>19 based in any way on use within the United States</p> <p>20 prior to the merger?</p> <p>21 A. No.</p> <p>22 Q. Okay. So FICO's position is that all of the use</p> <p>23 within the United States prior to the merger was</p> <p>24 within the scope of the license agreement?</p> <p>25 A. That's not what I testified.</p> <p style="text-align: right;">Page 17</p>	<p>1 Q. That's not my question. I asked any use. I'm not</p> <p>2 limiting it to --</p> <p>3 A. Well, Chubb was using the software in the United</p> <p>4 States, of course.</p> <p>5 Q. I'm asking you whether --</p> <p>6 (The question was read back by the court</p> <p>7 reporter.)</p> <p>8 THE WITNESS: In the United States, no.</p> <p>9 (Exhibit No. 393 was marked for identification.)</p> <p>10 BY MS. JANUS:</p> <p>11 Q. Showing you what's been marked as document 393, do</p> <p>12 you recognize this document?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. What is it?</p> <p>15 A. It is a complaint by Fair Isaac Corporation versus</p> <p>16 Chubb & Son.</p> <p>17 Q. And is this the operative complaint in the</p> <p>18 lawsuit?</p> <p>19 A. Yes.</p> <p>20 Q. After you've had a chance to --</p> <p>21 Are you familiar with the document?</p> <p>22 A. Generally, yes.</p> <p>23 Q. Okay. Could you point to me where in this</p> <p>24 document the conduct or the use that forms the</p> <p>25 basis of FICO's claims is described?</p> <p style="text-align: right;">Page 19</p>

1 **A. Section 14, Section 22, and then -- I should**
2 **stand -- correct that. Section 14 through Section**
3 **21, and then Section 22 through Section 28, and**
4 **then Section 29 through 31, and then Section 32**
5 **through 35.**
6 Q. Okay. So if we go back to Section 14 on page 3 of
7 Exhibit 393, does this section describe the
8 alleged unlicensed use post merger with ACE?
9 **A. It describes the transaction with ACE and the**
10 **Chubb parent, Chubb Corporation, and then it**
11 **describes the clauses in the agreement that**
12 **provide for a no assignment or a change in**
13 **control, and then some additional facts along**
14 **those lines as stated in the complaint.**
15 Q. So this relates to that category of post merger
16 use constituting a violation of the license
17 agreement according to FICO?
18 **A. Yes, from the moment of the merger.**
19 Q. Okay. Then let's look at Paragraph 22 through 28.
20 **A. Okay.**
21 Q. What does this section of the complaint relate to?
22 **A. This is talking about Chubb & Son having disclosed**
23 **to third parties -- third parties meaning**
24 **non-Chubb & Sons -- in the United Kingdom, Canada**
25 **and Australia, and those folks -- or those persons** Page 20

1 **using the software.**
2 Q. And --
3 **A. Or being disclosed to the software. I should**
4 **correct myself there.**
5 Q. Is it your understanding that these entities in
6 the United Kingdom, Canada and Australia are Chubb
7 entities in those areas?
8 MS. KLIEBENSTEIN: Objection, vague.
9 THE WITNESS: No, that's not my
10 understanding. My understanding is that Chubb &
11 Son is a division of Federal, Federal is a
12 subsidiary of Chubb Corporation in some form or
13 fashion because there's a lot of entities within
14 the Chubb Corporation umbrella, and that the
15 United Kingdom and Canada persons are affiliates
16 of Chubb Corporation, and that the Australian was
17 a third party.
18 BY MS. JANUS:
19 Q. So your understanding is that United Kingdom and
20 Canada --
21 **A. No, I'm sorry, unrelated third party.**
22 Q. Okay. So your understanding is that United
23 Kingdom and Canada are -- the uses in the United
24 Kingdom and Canada were by entities that were in
25 the Chubb group of corporations. Is the first Page 21

1 part correct?
2 **A. I think maybe the better way to say it is the**
3 **entities in Canada and the United Kingdom were not**
4 **Chubb & Sons.**
5 Q. Right, but that's not my question even if that's
6 the way you want to say it.
7 My question is, so for the United Kingdom
8 and Canada, the entities that engaged in the use
9 that FICO is complaining about were within the
10 Chubb group of entities?
11 **A. Yes.**
12 Q. The claim is that those entities were not, quote/
13 unquote, affiliates of Chubb & Son, a division of
14 Federal, correct?
15 **A. That is correct.**
16 Q. Okay. Australia you said is an -- your
17 understanding is that entity is an unrelated third
18 party?
19 **A. Right, our understanding is that it was a**
20 **consultant that was working with a Chubb entity.**
21 Q. Who was that?
22 **A. The Chubb entity or the consultant?**
23 Q. The consultant.
24 **A. It was a third party. I don't recall the name of**
25 **the affiliate -- or excuse me, of that third** Page 22

1 **party, just that it was a third party by its name.**
2 **It was different.**
3 Q. Okay. And is there any other alleged unlicensed
4 use in Australia other than what you've described
5 as being use by a consultant?
6 **A. Not that I'm aware of. I don't recall. This is**
7 **what was in the complaint.**
8 Q. Right, I understand this is what's in the
9 complaint, but I'm asking you for additional
10 information about FICO's claims. You're providing
11 testimony that's not in the complaint. You
12 understand that, right?
13 **A. Only what may have been learned through the**
14 **discovery process, so --**
15 Q. And you just don't know what that is?
16 **A. No.**
17 Q. So can you tell me as you sit here today what
18 facts form the basis for FICO's claim that use in
19 Australia was unlicensed?
20 **A. Yes. The license agreement clearly states that no**
21 **third parties may have access to the software, and**
22 **so in this instance -- there was one exception**
23 **made in the contract. So the contract is outlined**
24 **who can touch the software, who can access the**
25 **software and who can use the software. So there's** Page 23